

STATE OF MICHIGAN
COURT OF APPEALS

CALVIN FORD,

Plaintiff-Appellant,

v

CUNA MUTUAL GROUP and CUNA MUTUAL
INSURANCE SOCIETY,

Defendants-Appellees.

UNPUBLISHED

July 24, 2003

No. 239765

Macomb Circuit Court

LC No. 01-002251-CK

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant insured plaintiff under a group accidental death and dismemberment insurance policy. The policy defined "loss" as an "injury" resulting in death or dismemberment, and defined "injury" as "any bodily harm caused by an accident . . . and resulting directly and independently of all other causes of Loss." Plaintiff had a number of pre-existing medical conditions, including diabetes, diabetic neuropathy, circulatory insufficiency, atherosclerotic disease, and renal insufficiency. Defendant was aware of these conditions when it insured plaintiff.

While working as a janitor in a gymnasium plaintiff struck his left foot on a barbell and suffered a laceration. The laceration became infected, and eventually plaintiff's foot was amputated. Plaintiff sought benefits under defendant's policy. Defendant denied the claim on the ground that plaintiff's loss, i.e., the amputation of his foot, did not occur independently of all other causes. Defendant contended that plaintiff's various pre-existing health problems contributed to the need to amputate his foot.

Plaintiff filed suit seeking benefits under the policy. He alleged that his injury, i.e., the laceration, occurred independently of all other causes, and that that injury eventually resulted in the loss of his foot. Plaintiff alleged that defendant's policy was ambiguous, and that a reasonable person would expect that benefits would be available under the circumstances.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the bodily harm that formed the basis of plaintiff's claim was the loss of his left foot, and that the medical evidence demonstrated that the amputation was necessitated at least in part by plaintiff's underlying medical problems. The trial court granted defendant's motion, finding that no issue of fact existed as to whether plaintiff's underlying medical problems, in particular his diabetes, contributed to the need to amputate his foot.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). Whether the language of an insurance contract is ambiguous is a question of law for the court that is reviewed de novo. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably be understood in different ways. *Nikkel, supra*, at 566. Ambiguities are to be construed against the insurer. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Defendant's policy defined a "loss" as an "injury," and noted that with respect to a foot, a "loss" meant severance at or above the ankle joint. The policy defined an injury as "bodily harm . . . resulting directly and independently of all other causes of Loss." The language is clear and unambiguous, and thus fairly admits of but one interpretation. *Nikkel, supra*, at 566. Plaintiff's assertion that his "injury" was only his laceration and did not include his amputation is not supported by the language of the policy. Under the policy, a "loss" is an "injury." An "injury" is bodily harm that occurs independently of all other causes. Plaintiff's amputation did not constitute a "loss" under the policy because it did not occur independently of all other causes. Plaintiff put forth no evidence to contradict the medical evidence that his underlying health problems contributed to the need to amputate his foot. Defendant was entitled to summary disposition. The plain and unambiguous language of defendant's policy did not afford coverage to plaintiff under the circumstances. Thus, the court was required to enforce the policy as written, and could not create an ambiguity where none existed in order to apply the reasonable expectations rule. See *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 338; 632 NW2d 525 (2001).

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens